



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, OPT, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order of Possession of the rental unit for the tenants; and to recover the filing fee from the landlords for the cost of the application.

Both tenants attended the hearing and both gave affirmed testimony. The landlords were represented by an agent who also gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence provided by the parties has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established that an Order of Possession in favour of the tenants should be issued, specifically with respect to any boundaries of the rental property?

### Background and Evidence

**The first tenant** (JAO) testified that this fixed term tenancy began on December 1, 2014 and expires on November 30, 2019. The tenants still reside in the rental unit. Rent in the amount of \$3,500.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a

security deposit from the tenants in the amount of \$4,000.00 which is still held in trust by the landlords and no pet damage deposit was collected. The rental unit is a house, property and shop on 31 acres, and a copy of the tenancy agreement, marked, "Lease Agreement," has been provided.

The tenant further testified that the tenants leased the property for a tree farm. At the beginning of the tenancy, a portion of the property, including a barn was leased to another tenant for a working hog operation. That tenant vacated about 3 months ago. However, around March or April, 2016, the landlords leased another portion of the rental property to farmers for a vegetable operation, which the landlords never advised the tenants of at the beginning of the tenancy. The vegetable farmers just showed up and started working the property which had been empty at the beginning of this tenancy. Since then, there have been constant disturbances of traffic, garbage laying around, noise, people in the yard, coming and going at all times. The tenant talked to one of the landlords who said it's a working farm and the tenants are only leasing the house and shop. The tenant disagrees, and testified that the hog farmer moved out because the landlords kept re-leasing parts of the property. The landlords also parked a trailer where the tenants park, and ran home through the fields while the tenant's wife was home alone.

The tenants seek an Order of Possession for the entire property as per the terms of the lease and monetary compensation to show the landlords that the tenants are serious. If the landlords leave the tenants alone, the tenants don't want any monetary compensation.

**The second tenant** (SLO) testified that the landlords took it upon themselves to go onto the property and stole 2 goats. The tenant's husband didn't want police to be called, and the tenants were able to retrieve the goats.

The tenant also testified that the landlord told the tenant that the landlord was going to put in a corn maze as a tourism attraction, and is not respecting the terms of the lease.

**The landlords' agent** testified that the tenants were aware of the hog farming at the beginning of the tenancy and made an agreement between themselves and the hog farmer with respect to space and utilities.

The landlords' agent further testified that a crop was in the area where the vegetable farming started, and the landlords told the tenants that those portions of the property were already leased.

The landlords want the tenants to use the house, shop and parking area in front of the shop. That has been verbalized to the tenants only; however the landlords need the hog barn and the land.

The landlords' agent denies walking into the shop without permission and testified that the landlords' realtor called the tenants 3 times to make arrangements to take photographs. He also denies entering the property, however a friend wanted to park his truck by the hog barn in an open area and the landlords' agent moved the truck the next day.

### Analysis

I have reviewed the tenancy agreement, marked "Lease Agreement" signed by the parties in December, 2014. It is clear that the tenancy agreement specifies a certain address, not a portion of the property, except that it states: "Permitted Use: To use the Leased Premises only for the purposes of a landscaping and storage facility and for any other purpose or business approved in writing by the Landlord. It being agreed and understood the Landlord's consent will be granted if the proposed use is lawful and does not compete with the business of any other tenant on the Lands."

The parties agree that there was another tenant on the property for a hog farm at the beginning of the tenancy, and I accept the undisputed testimony of the landlords' agent that the tenants made an agreement between themselves with respect to the space and utilities. Given that the lease provides for the property, which I find cannot include a space that was already leased to another tenant, I am satisfied that the tenants are entitled to an Order of Possession for the entire property, less the hog barn, and I so order.

The *Residential Tenancy Act* does not permit me to make any monetary orders against another party as a punishment for any wrong-doing. The tenants have not established that any damage or loss has been suffered as a result of the landlords' failure to comply with the *Act* or the tenancy agreement, and therefore, the tenant's application for monetary compensation cannot succeed.

However, pursuant to Section 62 of the *Residential Tenancy Act*, I order the landlords to comply with the *Act* and the tenancy agreement by providing the tenants with their right to quiet enjoyment of the rental property.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in

favour of the tenants for that amount and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

The *Residential Tenancy Act* does not permit a landlord to collect a security deposit in any amount exceeding half a month's rent. The tenants have not applied for any orders relating to that, and I leave it to the parties to deal with the security deposit in accordance with the *Act*.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the tenants for the rental property, less the hog barn until the tenancy has ended in accordance with the *Residential Tenancy Act*.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby order the landlords to comply with the *Act* and the tenancy agreement by providing the tenants with their right to quiet enjoyment of the rental property.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 29, 2016

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Residential Tenancy Branch